

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DHR 00270

TOP PRIORITY CARE SERVICES, LLC,)
Petitioner,)
v.)
SMOKY MOUNTAIN CENTER LOCAL)
MANAGEMENT ENTITY/MANAGED)
CARE ORGANIZATION, *as legally*)
authorized contractor of and agent for N.C.)
DEPARTMENT OF HEALTH AND)
HUMAN SERVICES,)
Respondent.)

)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into effective this 19th day of August, 2015, by and between Top Priority Care Services, LLC (“Top Priority”), and Smoky Mountain Center Local Management Entity/Managed Care Organization (“Smoky”). The foregoing parties are at times referred to herein collectively as the “Parties,” and individually as a “Party.”

WITNESSETH

WHEREAS, Smoky is a Local Management Entity/Managed Care Organization as that term is defined at NCGS § 122C-3(20c), and manages publicly-funded mental health, intellectual/developmental disability and substance abuse services for consumers enrolled in the following twenty-three (23) counties: Alexander, Alleghany, Ashe, Avery, Buncombe, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, Wilkes, and Yancey Counties (“Smoky’s Catchment Area”); and

WHEREAS, Top Priority is a provider of mental health and behavioral health services and is providing certain services to recipients of publicly-funded services in Smoky’s Catchment Area; and

WHEREAS, Smoky issued a Notice of Overpayment dated October 9, 2014 notifying Top Priority of SMC's determination that Top Priority had received Medicaid overpayments in the amount of \$61,709.80; and

WHEREAS, Top Priority timely filed a Request for Reconsideration concerning the Notice of Overpayment; and

WHEREAS, Smoky's Program Integrity Reconsideration Panel revised the amount identified in the Notice of Overpayment to \$53,705.60 and issued a Notice of Decision on December 4, 2014 advising Top Priority of its decision; and

WHEREAS, Top Priority challenged Smoky's decision and filed a Petition for Contested Case Hearing against Smoky with the North Carolina Office of Administrative Hearings in Case # 15 DHR 00270; and

WHEREAS, the Parties desire to compromise and settle any and all existing, threatened, and potential disputes, claims, or rights between them; and

WHEREAS, the Parties have reached a compromise settlement resolving the differences between them on the disputes and potential disputes described herein, the terms and conditions of which are set forth in this Agreement.

NOW, THEREFOR, for and in consideration of the mutual promises and covenants hereinafter set forth, for agreed upon consideration, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties, for themselves and their predecessors, successors, managers, assigns, officers, directors, employees, and agents, agree as follows:

1. The settlement effected by this Agreement is a compromise of disputed claims, made to avoid the uncertainty and expense of litigation. The promises and terms agreed to herein are not to be construed as an admission of any alleged liability, nonconformity, error, or other deficiency on the part of any Party. Any such alleged liability, nonconformity, error, or other deficiency is expressly denied by the respective Parties.
2. For purposes of this Agreement, the Notice of Overpayment dated October 9, 2014 shall be referred to as the "Smoky Notice."
3. Top Priority will dismiss with prejudice its Petition for Contested Case Hearing against Smoky within two (2) business days of the complete execution of this Agreement.
4. Top Priority agrees to pay to Smoky the sum of \$3,500.00 in full compromise and settlement of the Smoky Notice. Petitioner owes no penalty or interest as long as it pays the agreed upon amount in accordance with the terms of this Agreement. Full and final payment in the amount of \$3,500.00 must be received by Smoky within seven (7) business days of the complete execution of this Agreement. Payment shall be made by wire transfer or in the form of a certified check payable to Smoky Mountain LME/MCO

and delivered to the following address: 200 Ridgefield Court, Suite 206, Asheville, North Carolina 28806.

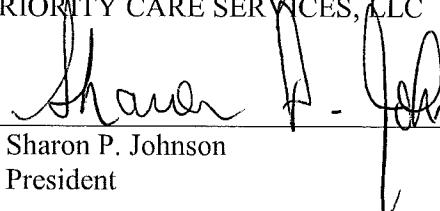
5. Smoky agrees to accept payment of \$3,500.00 in full compromise and settlement of the Smoky Notice.
6. Smoky acknowledges that the alleged overpayments that were at issue are not based upon allegations by Smoky that Top Priority engaged in fraud, willful misrepresentation, the filing of a false claim, or other illegal conduct.
7. Smoky will not conduct any further audits or investigations of Top Priority, unless required to do so under the terms of Smoky's contract with DMA in response to a credible allegation of fraud, waste, or abuse that is new and distinct from the facts alleged in any previous audit, investigation, or complaint.
8. Each Party agrees that it will not disclose the terms of this Agreement to anyone (except to its attorneys, accountants, and employees who need to know the terms of this Agreement in order to carry out their job responsibilities, corporate affiliates, parents, and subsidiaries, all of whom agree to abide by the disclosure restrictions set forth in this paragraph), except in response to a request from CMS or DHHS or a request made under the NC Public Records Law.
9. The Parties represent and agree that they will not disparage or defame the other Party, or any person associated with the other Party, or make any public statements that may be considered detrimental to the good name or business representation of the other Party.
10. All attorneys' fees, costs, and expenses related to all cases and disputes described herein shall be borne by each Party individually, and no claim for such fees, costs, or expenses shall be made.
11. Each Party hereby releases the other Party, and its current and former officials, employees, agents, and representatives, from any and all liability and causes of action that have arisen or may arise out of the Smoky Notice and OAH Case # 15 DHR 00270.
12. This Agreement constitutes the entire understanding and agreement between the Parties with respect to the subject matter hereof, and there are no promises, understandings, or representations other than those set forth herein. This Agreement supersedes any and all other prior agreements and drafts regarding the subject matter hereof. This Agreement may not be amended or modified except by a writing signed by both of the Parties or their duly authorized representatives.
13. This Agreement shall be construed and governed according to the laws of the State of North Carolina. If any provision of this Agreement is held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect.

14. Each Party acknowledges that it has carefully read this Agreement, knows the contents thereof, and executes this Agreement voluntarily as its own free act. Each Party further acknowledges that it has conferred with legal counsel to the extent that it has deemed appropriate regarding this Agreement prior to its execution.
15. This Settlement Agreement may be executed in counterparts, each of which shall be an original, and all of which taken together shall constitute one and the same instrument. The Parties may exchange electronic signatures on this Settlement Agreement, or written signatures by facsimile or e-mail, which shall be acceptable and deemed binding as if originals.
16. The undersigned represent and warrant that they are authorized to enter into this Agreement on behalf of the Parties.
17. This Agreement is binding upon the Parties' respective predecessors, successors, managers, members, assigns, officers, directors, employees, and agents.
18. This Agreement shall be effective upon the occurrence of the complete execution of this Agreement.

THIS SETTLEMENT AGREEMENT is agreed to and executed under seal by the Parties hereto:

TOP PRIORITY CARE SERVICES, LLC

By:



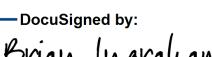
Sharon P. Johnson
President

(SEAL)

7-30-2015

SMOKY MOUNTAIN CENTER LOCAL MANAGEMENT
ENTITY/MANAGED CARE ORGANIZATION

By:



Brian Ingraham
Chief Executive Officer

(SEAL) Date: 8/19/2015

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WITNESSETH

WHEREAS, Smoky is a Local Management Entity/Managed Care Organization as that term is defined at NCGS § 122C-3(20c), and manages publicly-funded mental health, intellectual/developmental disability and substance abuse services for consumers enrolled in the following twenty-three (23) counties: Alexander, Alleghany, Ashe, Avery, Buncombe, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, Wilkes, and Yancey Counties (“Smoky’s Catchment Area”); and

WHEREAS, Top Priority is a provider of mental health and behavioral health services and is providing certain services to recipients of publicly-funded services in Smoky’s Catchment Area; and

WHEREAS, Smoky issued a Notice of Overpayment dated October 9, 2014 notifying Top Priority of SMC's determination that Top Priority had received Medicaid overpayments in the amount of \$61,709.80; and

WHEREAS, Top Priority timely filed a Request for Reconsideration concerning the Notice of Overpayment; and

WHEREAS, Smoky's Program Integrity Reconsideration Panel revised the amount identified in the Notice of Overpayment to \$53,705.60 and issued a Notice of Decision on December 4, 2014 advising Top Priority of its decision; and

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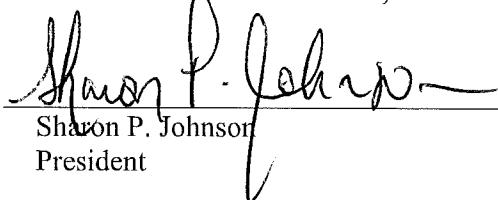
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10. All attorneys' fees, costs, and expenses related to all cases and disputes described herein shall be borne by each Party individually, and no claim for such fees, costs, or expenses shall be made.
11. Each Party hereby releases the other Party, and its current and former officials, employees, agents, and representatives, from any and all liability and causes of action that have arisen or may arise out of the Smoky Notice and OAH Case # 15 DHR 00270.
12. This Agreement constitutes the entire understanding and agreement between the Parties with respect to the subject matter hereof, and there are no promises, understandings, or representations other than those set forth herein. This Agreement supersedes any and all other prior agreements and drafts regarding the subject matter hereof. This Agreement may not be amended or modified except by a writing signed by both of the Parties or their duly authorized representatives.
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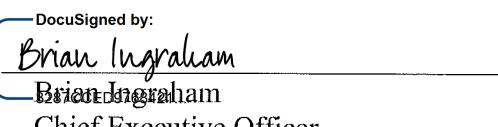
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By:  (SEAL) Date: 7-30-2015
Sharon P. Johnson
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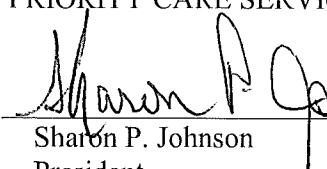
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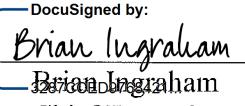
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